

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

THOMAS MOORE,	)	
	)	
Plaintiff	)	
	)	
v.	)	CAUSE NO. 3:04-CV-788 RM
	)	
DR. BARBARA KASPER, <i>et al.</i> ,	)	
	)	
Defendants	)	

OPINION AND ORDER

This matter is before the court *sua sponte* pursuant to FED. R. CIV. P. 25(d). Evelyn Ridley-Turner was named as a defendant in her official capacity, but she is no longer the Commissioner of the Indiana Department of Correction.

When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

FED. R. CIV. P. 25(d).

J. David Donahue is Evelyn Ridley-Turner's successor, and he will be substituted as a party to this litigation. Because service has not yet been made on Evelyn Ridley-Turner and because ineffective service affects "the substantial rights of the parties", a new summons and complaint shall be issued in his name.

Defense counsel has filed a motion to dismiss Evelyn Ridley-Turner. Since she is no longer a party to this litigation, the motion is moot.

For the foregoing reasons, the court:

(1) **DIRECTS** the clerk to substitute J. David Donahue for Evelyn Ridley-Turner;

(2) **DENIES AS MOOT** the motion to dismiss (docket # 33);

(3) **DIRECTS** the clerk to transmit a summons and USM-285 for J. David Donahue to the United States Marshals Service along with a copy of this order, a copy of this court's order of April 21, 2005 (docket # 8), and a copy of the complaint;

(4) **DIRECTS** the United States Marshals Service, pursuant to 28 U.S.C. § 1915(d), to effect service of process on J. David Donahue; and

(5) **ORDERS**, pursuant to 42 U.S.C. § 1997e(g)(2), that J. David Donahue respond, as provided for in the Federal Rules of Civil Procedure and N.D. IND. L.R. 10.1, only to the claim(s) for which the plaintiff has been granted leave to proceed in this screening order.

SO ORDERED:

ENTERED: July 25, 2005

/s/ Robert L. Miller, Jr.  
Robert L. Miller, Jr., Judge  
United States District Court